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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/697,705   | 10/29/2003  | Emory Hutchins Matts | 163.1818US01        | 8348             |
| 23552  | 7590        | 02/25/2005           | EXAMINER            |                  |
| MERCHANT & GOULD PC<br>P.O. BOX 2903<br>MINNEAPOLIS, MN 55402-0903 |             |                      | SMITH, KIMBERLY S   |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3644                |                  |
| DATE MAILED: 02/25/2005  |             |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/697,705

**Applicant(s)**

MATTS ET AL.

**Examiner**

Kimberly S Smith

**Art Unit**

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-72 is/are pending in the application.
- 4a) Of the above claim(s) 13,15-17,33,42-52,62 and 66 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12,14,18-32,34-41,53-61,63-65 and 67-72 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/04, 4/04, 12/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election of Species 1b in the reply filed on 12/08/04 is acknowledged. Because applicant did not *distinctly and specifically* point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 13, 15-17, 33, 42-52, 62 and 66 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 12/08/04.

### *Drawings*

3. The drawings are objected to because in Figure 1, the indicator "16" directed to the base should be labeled - -18- -; in Figure 9, item "24" should be labeled - -20- - and reference number "122" should be labeled - -126- -. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet

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submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 99. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “98” has been used to designate both outer lip and overhang portion. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37

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CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

6. The disclosure is objected to because of the following informalities: page 7, line 9: replace “a” with - -an- -; page 11, line 30: delete the second instance of “pheromone”; page 14, line 13: replace “past” with –paste- -. These grammatical and typographical errors were found in a cursory reading of the specification. The Applicant should thoroughly check the specification for any additional errors. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-12, 14, 18-32, 34-41, 53-61, 63-65 and 67-72 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. Regarding claims 1-12, 14, 18-32, 34-41, 53-61, 63-65 and 67-72, the independent claims are directed to an insect suppression station for baiting with insect suppression devices. As such, it is unclear as to whether the Applicant is claiming the suppression station or the combination of the suppression station and the suppression devices as the devices have not been positively claimed outside of a functional recitation. Claims 1-12, 14, 18-32, 34-41, 53-61, 63-65 and 67-

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72 have been construed for the basis of art rejection as the subcombination of the suppression station.

10. Claim 22 recites the limitation "the mounting structure" in line 1. There is insufficient antecedent basis for this limitation in the claim. Claim 22 has been construed to depend from claim 3 for the basis of art related rejections.

11. Claim 29 recites the limitation "the first pad area" in line 10. There is insufficient antecedent basis for this limitation in the claim.

12. Claim 53 recites the limitation "the first pad area" in line 10. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

14. Claims 1-12, 14, 18-20, 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Demarest et al., US Patent 4,841,669 (Demarest).

Demarest discloses a base, a cover, a first and second area for receiving an insect suppression device (as viewed in Figures 1 and 2), wherein the cover is attached to the base, the

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second area is positioned to be spaced from and at least partially overlapping the first area and wherein the cover is movable.

Regarding claim 2, Demarest discloses the station enclosing the first and second areas on at least two sides (via ridges 18).

Regarding claim 3, Demarest discloses the base comprising a mounting structure to permit mounting on a planar surface (16).

Regarding claim 4, Demarest discloses guide walls (20).

Regarding claim 5, Demarest disclose the station defining two or more insect entry areas (22).

Regarding claim 6, Demarest discloses the first area including a recessed area (seen in Figure 2) for receiving the insect suppression device and tabs (26) for retaining the device.

Regarding claims 7 and 9, the vacant area defined by (18) and (20) is deemed a depression adjacent the first and second areas which facilitates the placement and removal of the suppression device.

Regarding claim 8, Demarest discloses the second area including a recessed area (seen in Figure 2) for receiving the insect suppression device and tabs (26) for retaining the device.

Regarding claim 10, Demarest discloses the first and second areas are the same shape.

Regarding claims 11, 12 and 14, as the insect suppression device has not been structurally claimed and has been disclosed in a functional recitation, it has been held that the recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

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Regarding claims 18-20, Demarest discloses the station being made from any number of polymeric materials thereby being water resistant, impact resistant and plastic.

Regarding claim 25, Demarest discloses the cover being configured to be removed from the base.

Regarding claim 26, Demarest discloses the cover being deformable (as the cover is a polymeric material it is inherent that it will deform when the cover is pulled apart from the base).

15. Claims 1, 3, 29, 30, 53-61, 63-65 and 67-72 are rejected under 35 U.S.C. 102(e) as being anticipated by Johnson et al., US Patent 6,807,768 (Johnson).

Johnson discloses a base (22) having a first area and a cover (24) having a second area (i.e. that located on the underside of the cover) wherein the second area is positioned to be spaced from and partially overlapping the first area and wherein the cover is movable.

Regarding claim 3, Johnson discloses a mounting structure (72).

Regarding claim 29, Johnson discloses an insect station having a first area (28), a cover (24) and a back side for mounting comprising a mounting structure (72), wherein the station defines a cutaway portion (74) adjacent the back surface to deflect water running down the planar surface (column 4, lines 25-26).

Regarding claim 30, Johnson discloses guide walls (64)

Regarding claims 53-56, Johnson discloses a base (22) including a mounting structure (i.e. the underside of base (22) as it would permit mounting via an adhesive to a planar surface), a access opening (72), a first area (viewed in Figure 2) and a cover (24); wherein the first area is on the base; wherein the access opening is defined within the first area (viewed in Figure 2);



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wherein the first area is configured to support a suppression device over the access opening and can gain access via either side of the opening.

Regarding claim 57, Johnson discloses the underside of the cover which can receive a removable suppression device.

Regarding claim 58, Johnson discloses a recessed area (i.e. countersunk area at (72) and tabs (42) which would retain a suppression device via the cover.

Regarding claim 59, Johnson discloses a depression (at 32) being adjacent the first area which facilitates the placement of the device.

Regarding claim 60, Johnson discloses a second area (i.e. located on the underside of cover (24)).

Regarding claim 61, Johnson discloses the second area including a recessed area (as viewed in Figure 3) and tabs (40) for retaining an insect suppression device.

Regarding claim 63, Johnson discloses guide walls (64).

Regarding claims 64, 65 and 67, as the insect suppression device has not been structurally claimed and has been disclosed in a functional recitation, it has been held that the recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Regarding claims 68-70, Johnson discloses the station is made from plastic thereby being water and impact resistant.

Regarding claim 71, Johnson discloses the station including a backside (74) and a widest portion spaced from the back side (i.e. bottom of 28) wherein the perimeter of both are

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substantially circular and the outer diameter of the back side is less than the outer diameter of the widest portion to define a cutaway portion.

Regarding claim 72, the cover of Johnson is configured to be removed from the base while squeezing the cover (as an inherent part of twisting a cover off is to squeeze the cover).

16. Claims 1 and 24-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Duston et al., US Patent 6,796,082 (Duston).

Duston discloses a base (2) having a first area and a cover (3) having a second area (i.e. that located on the underside of the cover) wherein the second area is positioned to be spaced from and partially overlapping the first area and wherein the cover is movable.

Regarding claim 24, Duston discloses a backside and a widest portion spaced from the back side (as can clearly be viewed in Figure 1 as the chamfer of the base).

Regarding claim 25, Duston discloses the cover is configured to be removed from the base.

Regarding claim 26, Duston discloses the cover is deformable (inherent in the disclosure of the cover being attached via a snap-fit arrangement (column 4, line 44)).

Regarding claim 27, Duston discloses the cover comprising a rim (30) and the base comprising attachment tabs (6, 7).

Regarding claim 28, as Duston discloses the cover and base are attached via a snap-fit arrangement, it is inherent that the cover must be deformed to bring the rim out of engagement with the device.

***Claim Rejections - 35 USC § 103***

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Demarest et al., US Patent 4,841,669 (Demarest) in view of Price et al., US Patent 6,789,352.

Demarest discloses the invention substantially as claimed. However, Demarest does not disclose the station including an outer domed portion. Price teaches within the same field of endeavor the use of an outer domed portion to help deflect water and other debris from the station. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the domed portion as taught by Price with the device disclosed by Demarest in order to help deflect water and debris which might fall onto the station.

19. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson, US Patent 6,807,768 as applied to claims 1 and 3 above.

Johnson discloses the device substantially as claimed. However, Johnson only discloses a single mounting hole, not "holes". It would have been an obvious matter of design choice to use more than one hole, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

Regarding claim 23, Johnson discloses the claimed invention except for positively stating the type of fastening means to be used. It would have been an obvious matter of design choice to use a screw or nail (as both of these means are capable of "extending through" area (72) as

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disclosed in Johnson) as these fastening means are notoriously well known in the art for attaching a device to a structure by extending there through.

20. Claims 29, 31, 32, 34-39 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Demarest et al., US Patent 4,841,669 (Demarest) in view of Johnson et al., US Patent 6,807,768 (Johnson).

Demarest discloses a first area, a cover and a backside capable of mounting (as discussed above with regards to claims 1-3). However, Demarest does not disclose the use of a cutaway portion adjacent to the back surface. Johnson teaches within the same field of endeavor the use of a cutaway portion (74) so as to reduce the introduction of water into the station (column 4, lines 25-26). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the cutaway portion as taught by Johnson with the device of Demarest in order to reduce the introduction of water into the station.

Regarding claim 31, Demarest as modified discloses a first recessed area for receiving a suppression device (as viewed in Figure 2) and tabs (26) for retaining the device.

Regarding claim 32 Demarest as modified discloses a second area (as viewed in Figure 3).

Regarding claims 34 and 35, as the insect suppression device has not been structurally claimed and has been disclosed in a functional recitation, it has been held that the recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

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Regarding claims 36-38, Demarest as modified discloses the station being made from any number of polymeric materials thereby being water resistant, impact resistant and plastic.

Regarding claim 39, Demarest as modified discloses the invention substantially as claimed. Johnson further discloses the use of a domed portion to help direct rain and other fallen debris off of the station. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the domed structure as taught by Johnson with the device of Demarest in order to help direct rain and debris away from the station.

Regarding claim 41, Demarest as modified discloses the cover being configured to be removed if squeezed along a first axis.

21. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Demarest as modified as applied to claim 39 above, and further in view of Snell et al., US Patent 6,378,243 (Snell).

Demarest as modified discloses the invention substantially as claimed. However, Demarest as modified does not disclose the cover having an overhang portion. Snell teaches within the same field of endeavor the use of a cover having an overhanging portion so as to reduce ingress of excess rain or other surface water (column 21, lines 23-25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the overhanging cover as taught by Snell with the device of Demarest as modified in order to reduce the amount of rain and other surface water that may enter the device.

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***Conclusion***


22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Woodruff et al. (US 4,563,836) and Novack (US 6,594,948).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 703-308-8515 (571-272-6909 after April 4, 2005). The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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